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A-502, Jan. 24, 1952

Subject: FCN Treaty with Japan. Mission's Despatch 963,
January 2, 1952.

The question of the GATT (point "a" on page 1 of ref. despatch) is treated in Department Airgram No. 477, January 16.

As to point "b", regarding customs valuation, the Department's general position is as set forth on page 4 of the memorandum forwarded under cover of DEPINS 63, NOV 1. The Department is not prepared to incorporate the provisions of Article VII of the GATT into any bilateral treaty having the force and effect of law. The basic principle of the GATT that valuation should be based on actual rather than arbitrary or fictitious values is undoubtedly sound; but a number of changes in US customs valuation laws would be necessary to bring them into full conformity with the GATT article. Moreover, attempts to change customs valuation practices cannot feasibly be made on a bilateral basis; since customs administration is perforce of uniform and general applicability, a general multilateral settlement is the appropriate medium for any negotiated changes.

As Mission will recall, Article VII of GATT is being applied provisionally (under the Protocol of Provisional Application) only "to the fullest extent not inconsistent with existing legislation." All changes in US customs valuation laws which would be required in order for the US to fully conform with Article VII were proposed to Congress in the Customs Simplification Bill (HR 5505). However, as passed by the House, the bill does not abolish the "American selling price" as the basis for valuing certain articles, and it seems most unlikely that the Senate will disagree with the House on this point. The full application of GATT Article VII by the US would not be possible without the abolition of "American selling price".

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If enacted without further substantial amendment, of course, this bill would otherwise effect various improvements in existing customs practices presumably of benefit to Japan as well as other countries. As it now stands, the so-called "foreign value" feature of existing law would be abolished, for example, leaving "export value" alone as the preferred basis for valuation where satisfactorily ascertainable, except as to articles to which "American selling price" applies. "Export value" is defined, in the print reported by the House Committee, as the value "at which such or similar merchandise is freely sold or offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other charges and expenses incidental to placing the merchandise in condition, packed ready for shipment to the US.) The Senate Finance Committee is understood to be planning to take up the bill about a month hence.

The Committee, in reporting the bill to the House, summarized its aims and purposes as follows:

"Your committee believes that enactment of this bill will result in giving improved service to the importing public at a lesser cost to the public and taxpayers, and will expedite and increase the flow of goods in international trade by enabling the customs service to perform its manifold tasks in a more economical and efficient manner, and by removing many complexities of customs procedures which impede the importation of merchandise without contributing to the tariff protection of American industry."

The Department cannot of course make predictions as to final Congressional action on this measure; but the Department is forwarding the foregoing information in the supposition that it may be helpful in future discussions of the customs valuation problem.

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If the Japanese press for provision on customs valuation in the treaty, the Department might be willing to consider some kind of very general formula which would not imply any obligation to change applicable U. S. law and which stressed the willingness of the two Parties to consult together about problems susceptible of administrative solution arising in the customs valuation field. This might substantially meet the Japanese objective. Something like this was done in an exchange of notes attached to the Trade Agreement of 1938 with the United Kingdom. This exchange referred to discussions "concerning the bases and methods of determining dutiable value ... and to the desirability of removing, insofar as possible, any uncertainties in respect of these matters." It then went on to declare the readiness of the two Governments to afford to each other "full opportunity for consultation concerning general problems of valuation as well as specific difficulties of application which may arise from time to time." The Department mentions this merely to illustrate a possibly acceptable general approach, if the Japanese care to formulate for consideration a more cautious proposal than their present one. Department would not wish arbitrarily to reject a well-reasoned practicable proposal.

Other points raised in ref. despatch have been covered in a separate airgram. This completes Department's replies to all Mission's despatches thus far received concerning the treaty.

S/S - CR

JAN 24 1952 P.M.

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